

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ANYSA NGETHPHARAT and JAMES
KELLEY, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

No. 2:20-cv-00454 MJP

ORDER UNDER FED. R. EVID. 502(d)

1. Pursuant to Order of this Court under Fed. R. Evid. 502(d), no disclosure, production, or exchange of Information (as defined below) in connection with the above-captioned matter (the “Litigation”) shall constitute a waiver of attorney-client privilege or of any work product protection in this or any other federal or state proceeding under any circumstances.

2. This Order applies to all documents and electronically stored information (as those terms are used in Fed. R. Civ. P. 34), the information contained therein, and all other information produced, disclosed, or exchanged by the Parties in connection with this Litigation, whether revealed in a document, electronically stored information, deposition, other testimony, discovery response or otherwise (collectively, “Information”). This Order should be interpreted to prevent waiver to the broadest extent possible under the Federal Rules of Evidence and the Federal Rules of Civil Procedure.

3. This Order is entered pursuant to Federal Rule of Civil Procedure 26(c)(1) and is intended to protect the Parties to the Litigation, to the fullest extent permissible by law, against any waiver of the attorney-client privilege and/or the work product protection that might

1 otherwise arise from the disclosure of privileged or protected Information. This Order is intended
2 to override any contrary law or presumptions, if and as applicable and permissible. The Parties'
3 compliance with this Order's terms shall be understood, for all purposes within and outside this
4 Litigation, to constitute reasonable and prompt efforts to preserve privileges and protections
5 from discovery in respect to any disclosed privileged or protected Information.

6 4. This Order applies regardless of whether the Information describes or relates to
7 actions taken in this Litigation, in prior or separate proceedings, or in other non-litigation
8 matters.

9 5. A party receiving Information ("Receiving Party") is under a good faith
10 obligation to promptly alert the Producing Party if Information that is produced, disclosed,
11 exhibited, or communicated by a Producing Party appears to be privileged or work product-
12 protected either on its face or in light of facts known to the Receiving Party.

13 6. To effectuate a clawback, upon learning of the production of privileged or
14 protected Information, the Party making a production ("Producing Party") shall promptly give all
15 counsel of record written notice of the production. The Producing Party need not provide any
16 explanation or evidence regarding the reasonableness of the efforts taken to prevent production
17 of such Information, and the Receiving Party agrees that it will not challenge the reasonableness
18 of such efforts. The notice shall identify the Information that was produced (including the format
19 of the production—e.g., paper, electronically stored information) and the date(s) the Information
20 was produced. If the Producing Party claims that only a portion of a document, electronically
21 stored information or tangible thing produced is privileged or protected Information, the
22 Producing Party shall also promptly provide a new copy of the Information with the allegedly
23 privileged or protected portions redacted. If the Receiving Party had previously filed documents
24 with the Court containing newly-identified protected Information or pleadings discussing those
25 documents' contents, then the Parties shall work in good faith to determine whether exhibits
26 must be withdrawn and filed with new redactions.

7. Upon receiving notice of a production or upon determining that Information it
received is known to be privileged or protected in whole or in part, the Receiving Party must

1 promptly return, sequester, and/or destroy the Information and all copies and destroy any notes
2 that reproduce, copy or otherwise reflect or disclose the substance of the privileged or work
3 product-protected Information. Any such Information that may exist on any computer or back-up
4 media which cannot be reasonably deleted may be retained until such time as the media is
5 subject to routine deletion or destruction provided that no person attempts to access the contents
6 of the Information unless allowed under the terms of this Order. If the Receiving Party disclosed
7 the privileged or work product-protected Information before being notified, it must take
8 reasonable steps to retrieve and prevent further use or distribution of such Information. This duty
9 expires if this Court rules that the Information is not privileged or protected by the work product
10 doctrine.

11 8. If the Receiving Party contests the claim of privilege or work product protection
12 in good-faith, it may within fourteen (14) days of the Producing Party's written notice, seek
13 determination from the Court as to the privileged or protected nature of the Information. Pending
14 such challenge, a Receiving Party may securely retain copies of the document, record, or data
15 and any related notes. Pending a ruling on its challenge, the Receiving Party may not use the
16 protected Information in any way other than prosecuting its challenge.

17 9. To the extent that any Party obtains any privileged Information through disclosure
18 or communications, such Information may not be submitted to the Court or presented for
19 admission into evidence or sought in discovery by that Party in this Litigation or in any other
20 proceeding or action unless such filing is made under seal. If requested by the Receiving Party,
21 the Producing Party shall provide the Information at issue to the Court for *in camera* review
22 unless otherwise ordered by the Court.

23 10. If the Court sustains the claim that the Information disclosed, exchanged,
24 produced, or discussed is privileged or work product-protected, the Receiving Party must, within
25 ten (10) days of the Court's order, promptly return and/or destroy the Information and all copies
26 and destroy any notes that reproduce, copy or otherwise disclose the substance of the privileged
or work product-protected Information. The Receiving Party shall advise the Producing Party in
writing of the return and/or destruction.

11. Nothing in this Order shall be construed to limit a party's right to conduct a review of documents, ESI, or information (including metadata) for relevance and responsiveness and/or require the production of any Information or communication that a Party contends is protected from disclosure by the attorney-client privilege and/or the work product doctrine.

DONE and ORDERED this __16th__ day of _September_, 2020.



Marsha J. Pechman
United States Senior District Judge

Presented by:

s/ Peter W. Herzog III

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CERTIFICATE OF SERVICE (CM/ECF)

I certify that on August 24, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

- **Stephen M. Hansen**
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- **Scott P. Nealey**
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s/_____